

Adopted	Rejected
---------	----------

COMMITTEE REPORT

YES:	7
NO:	3

MR. SPEAKER:

*Your Committee on Labor and Employment, to which was referred House Bill 1928, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 22-3-3-5 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. The pecuniary
5 liability of the employer for medical, surgical, hospital and nurse
6 service herein required shall be limited to such charges as prevail as
7 provided under IC 22-3-6-1(j), in the same community (as defined in
8 IC 22-3-6-1(h)) for a like service or product to injured persons. The
9 employee and the employee's estate do not have liability to a health
10 care provider for payment for services obtained under IC 22-3-3-4. The
11 right to order payment for all services provided under IC 22-3-2
12 through IC 22-3-6 is solely with the board. **Subject to the exception**
13 **in IC 27-8-5-15**, all claims by a health care provider for payment for
14 services are against the employer and the employer's insurance carrier,
15 if any, and must be made with the board under IC 22-3-2 through

1 IC 22-3-6. The worker's compensation board may withhold the
 2 approval of the fees of the attending physician in a case until the
 3 attending physician files a report with the worker's compensation board
 4 on the form prescribed by the board."

5 Page 3, line 38, after "employment" insert "**(as defined in this**
 6 **subsection)**".

7 Page 3, line 40, after "employee" insert "**of the secondary casual**
 8 **employer**".

9 Page 6, between lines 24 and 25, begin a new paragraph and insert:
 10 "SECTION 3. IC 22-3-7-9 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) As used in this
 12 chapter, "employer" includes the state and any political subdivision,
 13 any municipal corporation within the state, any individual or the legal
 14 representative of a deceased individual, firm, association, limited
 15 liability company, or corporation or the receiver or trustee of the same,
 16 using the services of another for pay. If the employer is insured, the
 17 term includes his insurer so far as applicable. However, the inclusion
 18 of an employer's insurer within this definition does not allow an
 19 employer's insurer to avoid payment for services rendered to an
 20 employee with the approval of the employer.

21 (b) As used in this chapter, "employee" means every person,
 22 including a minor, in the service of another, under any contract of hire
 23 or apprenticeship written or implied, except one whose employment is
 24 both casual and not in the usual course of the trade, business,
 25 occupation, or profession of the employer. For purposes of this chapter
 26 the following apply:

27 (1) Any reference to an employee who has suffered disablement,
 28 when the employee is dead, also includes his legal representative,
 29 dependents, and other persons to whom compensation may be
 30 payable.

31 (2) An owner of a sole proprietorship may elect to include himself
 32 as an employee under this chapter if he is actually engaged in the
 33 proprietorship business. If the owner makes this election, he must
 34 serve upon his insurance carrier and upon the board written notice
 35 of the election. No owner of a sole proprietorship may be
 36 considered an employee under this chapter unless the notice has
 37 been received. If the owner of a sole proprietorship is an
 38 independent contractor in the construction trades and does not

1 make the election provided under this subdivision, the owner
2 must obtain an affidavit of exemption under IC 22-3-7-34.5.

3 (3) A partner in a partnership may elect to include himself as an
4 employee under this chapter if he is actually engaged in the
5 partnership business. If a partner makes this election, he must
6 serve upon his insurance carrier and upon the board written notice
7 of the election. No partner may be considered an employee under
8 this chapter until the notice has been received. If a partner in a
9 partnership is an independent contractor in the construction trades
10 and does not make the election provided under this subdivision,
11 the partner must obtain an affidavit of exemption under
12 IC 22-3-7-34.5.

13 (4) Real estate professionals are not employees under this chapter
14 if:

15 (A) they are licensed real estate agents;

16 (B) substantially all their remuneration is directly related to
17 sales volume and not the number of hours worked; and

18 (C) they have written agreements with real estate brokers
19 stating that they are not to be treated as employees for tax
20 purposes.

21 (5) A person is an independent contractor in the construction
22 trades and not an employee under this chapter if the person is an
23 independent contractor under the guidelines of the United States
24 Internal Revenue Service.

25 (6) An owner-operator that provides a motor vehicle and the
26 services of a driver under a written contract that is subject to
27 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor
28 carrier is not an employee of the motor carrier for purposes of this
29 chapter. The owner-operator may elect to be covered and have the
30 owner-operator's drivers covered under a worker's compensation
31 insurance policy or authorized self-insurance that insures the
32 motor carrier if the owner-operator pays the premiums as
33 requested by the motor carrier. An election by an owner-operator
34 under this subdivision does not terminate the independent
35 contractor status of the owner-operator for any purpose other than
36 the purpose of this subdivision.

37 **An individual who is employed by a school corporation (as defined**
38 **in IC 21-6.1-1-7) and who performs secondary casual employment**

(as defined in this subsection) during hours that the employee is not scheduled to work for the school corporation is not an employee of the secondary casual employer for purposes of IC 22-3-7.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. A minor employee shall be considered as being of full age for all purposes of this chapter. However, if the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the employer shall be wholly liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age, and who at the time of the last exposure is employed, suffered, or permitted to work at any occupation which is not prohibited by law, the provisions of this subsection prescribing double the amount otherwise recoverable do not apply. The rights and remedies granted to a minor under this chapter on account of disease shall exclude all rights and remedies of the minor, his parents, his personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of any disease.

(d) This chapter does not apply to casual laborers as defined in subsection (b), nor to farm or agricultural employees, nor to household employees, nor to railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto, nor to their employers with respect to these employees. Also, this chapter does not apply to employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

(e) As used in this chapter, "disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he claims

1 compensation or equal wages in other suitable employment, and
2 "disability" means the state of being so incapacitated.

3 (f) For the purposes of this chapter, no compensation shall be
4 payable for or on account of any occupational diseases unless
5 disablement, as defined in subsection (e), occurs within two (2) years
6 after the last day of the last exposure to the hazards of the disease
7 except for the following:

8 (1) In all cases of occupational diseases caused by the inhalation
9 of silica dust or coal dust, no compensation shall be payable
10 unless disablement, as defined in subsection (e), occurs within
11 three (3) years after the last day of the last exposure to the hazards
12 of the disease.

13 (2) In all cases of occupational disease caused by the exposure to
14 radiation, no compensation shall be payable unless disablement,
15 as defined in subsection (e), occurs within two (2) years from the
16 date on which the employee had knowledge of the nature of his
17 occupational disease or, by exercise of reasonable diligence,
18 should have known of the existence of such disease and its causal
19 relationship to his employment.

20 (3) In all cases of occupational diseases caused by the inhalation
21 of asbestos dust, no compensation shall be payable unless
22 disablement, as defined in subsection (e), occurs within three (3)
23 years after the last day of the last exposure to the hazards of the
24 disease if the last day of the last exposure was before July 1, 1985.

25 (4) In all cases of occupational disease caused by the inhalation
26 of asbestos dust in which the last date of the last exposure occurs
27 on or after July 1, 1985, and before July 1, 1988, no compensation
28 shall be payable unless disablement, as defined in subsection (e),
29 occurs within twenty (20) years after the last day of the last
30 exposure.

31 (5) In all cases of occupational disease caused by the inhalation
32 of asbestos dust in which the last date of the last exposure occurs
33 on or after July 1, 1988, no compensation shall be payable unless
34 disablement (as defined in subsection (e)) occurs within
35 thirty-five (35) years after the last day of the last exposure.

36 (g) For the purposes of this chapter, no compensation shall be
37 payable for or on account of death resulting from any occupational
38 disease unless death occurs within two (2) years after the date of

1 disablement. However, this subsection does not bar compensation for
2 death:

- 3 (1) where death occurs during the pendency of a claim filed by an
4 employee within two (2) years after the date of disablement and
5 which claim has not resulted in a decision or has resulted in a
6 decision which is in process of review or appeal; or
- 7 (2) where, by agreement filed or decision rendered, a
8 compensable period of disability has been fixed and death occurs
9 within two (2) years after the end of such fixed period, but in no
10 event later than three hundred (300) weeks after the date of
11 disablement.

12 (h) As used in this chapter, "billing review service" refers to a
13 person or an entity that reviews a medical service provider's bills or
14 statements for the purpose of determining pecuniary liability. The term
15 includes an employer's worker's compensation insurance carrier if the
16 insurance carrier performs such a review.

17 (i) As used in this chapter, "billing review standard" means the data
18 used by a billing review service to determine pecuniary liability.

19 (j) As used in this chapter, "community" means a geographic service
20 area based on zip code districts defined by the United States Postal
21 Service according to the following groupings:

- 22 (1) The geographic service area served by zip codes with the first
23 three (3) digits 463 and 464.
- 24 (2) The geographic service area served by zip codes with the first
25 three (3) digits 465 and 466.
- 26 (3) The geographic service area served by zip codes with the first
27 three (3) digits 467 and 468.
- 28 (4) The geographic service area served by zip codes with the first
29 three (3) digits 469 and 479.
- 30 (5) The geographic service area served by zip codes with the first
31 three (3) digits 460, 461 (except 46107), and 473.
- 32 (6) The geographic service area served by the 46107 zip code and
33 zip codes with the first three (3) digits 462.
- 34 (7) The geographic service area served by zip codes with the first
35 three (3) digits 470, 471, 472, 474, and 478.
- 36 (8) The geographic service area served by zip codes with the first
37 three (3) digits 475, 476, and 477.

38 (k) As used in this chapter, "medical service provider" refers to a

1 person or an entity that provides medical services, treatment, or
2 supplies to an employee under this chapter.

3 (l) As used in this chapter, "pecuniary liability" means the
4 responsibility of an employer or the employer's insurance carrier for the
5 payment of the charges for each specific service or product for human
6 medical treatment provided under this chapter in a defined community,
7 equal to or less than the charges made by medical service providers at
8 the eightieth percentile in the same community for like services or
9 products.

10 SECTION 4. IC 22-3-7-17 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 17. (a) During the
12 period of disablement, the employer shall furnish or cause to be
13 furnished, free of charge to the employee, an attending physician for
14 the treatment of his occupational disease, and in addition thereto such
15 surgical, hospital, and nursing services and supplies as the attending
16 physician or the worker's compensation board may deem necessary. If
17 the employee is requested or required by the employer to submit to
18 treatment outside the county of employment, said employer shall also
19 pay the reasonable expense of travel, food, and lodging necessary
20 during the travel, but not to exceed the amount paid at the time of said
21 travel by the state of Indiana to its employees.

22 (b) During the period of disablement resulting from the occupational
23 disease, the employer shall furnish such physician, services, and
24 supplies, and the worker's compensation board may, on proper
25 application of either party, require that treatment by such physician and
26 such services and supplies be furnished by or on behalf of the employer
27 as the board may deem reasonably necessary. After an employee's
28 occupational disease has been adjudicated by agreement or award on
29 the basis of permanent partial impairment and within the statutory
30 period for review in such case as provided in section 27(i) of this
31 chapter, the employer may continue to furnish a physician or a surgeon
32 and other medical services and supplies, and the board may, within
33 such statutory period for review as provided in section 27(i) of this
34 chapter, on a proper application of either party, require that treatment
35 by such physician or surgeon and such services and supplies be
36 furnished by and on behalf of the employer as the board may deem
37 necessary to limit or reduce the amount and extent of such impairment.
38 The refusal of the employee to accept such services and supplies when

1 so provided by or on behalf of the employer, shall bar the employee
2 from all compensation otherwise payable during the period of such
3 refusal and his right to prosecute any proceeding under this chapter
4 shall be suspended and abated until such refusal ceases. The employee
5 must be served with a notice setting forth the consequences of the
6 refusal under this section. The notice must be in a form prescribed by
7 the worker's compensation board. No compensation for permanent total
8 impairment, permanent partial impairment, permanent disfigurement,
9 or death shall be paid or payable for that part or portion of such
10 impairment, disfigurement, or death which is the result of the failure of
11 such employee to accept such treatment, services, and supplies,
12 provided that an employer may at any time permit an employee to have
13 treatment for his disease or injury by spiritual means or prayer in lieu
14 of such physician, services, and supplies.

15 (c) Regardless of when it occurs, where a compensable occupational
16 disease results in the amputation of a body part, the enucleation of an
17 eye, or the loss of natural teeth, the employer shall furnish an
18 appropriate artificial member, braces, and prosthodontics. The cost of
19 repairs to or replacements for the artificial members, braces, or
20 prosthodontics that result from a compensable occupational disease
21 pursuant to a prior award and are required due to either medical
22 necessity or normal wear and tear, determined according to the
23 employee's individual use, but not abuse, of the artificial member,
24 braces, or prosthodontics, shall be paid from the second injury fund
25 upon order or award of the worker's compensation board. The
26 employee is not required to meet any other requirement for admission
27 to the second injury fund.

28 (d) If an emergency or because of the employer's failure to provide
29 such attending physician or such surgical, hospital, or nurse's services
30 and supplies or such treatment by spiritual means or prayer as specified
31 in this section, or for other good reason, a physician other than that
32 provided by the employer treats the diseased employee within the
33 period of disability, or necessary and proper surgical, hospital, or
34 nurse's services and supplies are procured within said period, the
35 reasonable cost of such services and supplies shall, subject to approval
36 of the worker's compensation board, be paid by the employer.

37 (e) This section may not be construed to prohibit an agreement
38 between an employer and employees that has the approval of the board

1 and that:

2 (1) binds the parties to medical care furnished by providers
3 selected by agreement before or after disablement; or

4 (2) makes the findings of a provider chosen in this manner
5 binding upon the parties.

6 (f) The employee and the employee's estate do not have liability to
7 a health care provider for payment for services obtained under this
8 section. The right to order payment for all services provided under this
9 chapter is solely with the board. **Subject to the exception in**
10 **IC 27-8-5-15**, all claims by a health care provider for payment for
11 services are against the employer and the employer's insurance carrier,
12 if any, and must be made with the board under this chapter."

13 Page 9, line 37, after "policies" insert "**or plans of self-insurance**".

14 Page 9, line 38, after "policy" insert "**or plan of self-insurance**".

15 Page 10, line 4, after "exhausted," insert "**or has not been elected**
16 **under IC 22-3-6-1 or IC 22-3-7-9**".

17 Page 10, line 4, after "policy" insert "**or plan of self-insurance**".

18 Page 15, line 7, after "policy" insert "**or plan of self-insurance**".

19 Page 15, line 11, after "." insert "**The policy or plan of**
20 **self-insurance may not contain a provision that excludes coverage**
21 **for injuries incurred in the course of activities for wage or**

1 **employment, except to the extent that the injuries are covered by**
2 **IC 22-3."**

3 Renumber all SECTIONS consecutively.
 (Reference is to HB1928 as introduced.)

and when so amended that said bill do pass.

Representative Liggett